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Hunton & Williams
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/678,313
Filing Date: October 03, 2000
Appellant(s): BLENK, CHRISTOPHER W.

Brian M. Buroker, Reg. No. 39,125
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 14, 2006 appealing from the Office action mailed January 27, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,260,064	KURZROK	07-2001
6,948,069	TEPPLER	9-2005
6,473,084	PHILIPS ET AL.	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 8-12, 15-19, 22-26, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurzrok (U.S. 6,260,064) and Teppler (U.S. 6,948,069).

As per claims 1 and 15, Kurzrok discloses a system and method for providing reader-supplied evaluation of a sample of an authored work for potential publication of the work comprising:

an author interface module, operably connected to the Internet, for receiving a portion of a work from an author to be reviewed via the Internet (abstract; col. 2, lines

33-57; item 20 in Figure 1; Figure 2; A content input device allows users to enter works for display on a web site.);

storage means for storing the portion of the work along with other portions of works for review (col. 2, lines 33-57; item 16 in Figure 1; The system has a memory device for storing work for review.);

a reader interface module for receiving a request from a reader to review the portion of a work stored in the storage means (col. 3, lines 33-40; Figure 3; A reader interacts with the web site to request and review content that is retrieved from a memory storage means.);

work presentation means for presenting the portion of a work to the reader based on the reader's request (col. 2, lines 33-57; col. 2, line 65-col. 3, line 8; col. 3, lines 33-40; Figures 1-3; The web site presents to a reader requested information. In many instances, the reader views a portion of the information and must click on a link to get more information.);

security means for limiting access to the portions of the works (col. 3, lines 33-40; col. 5, lines 1-8; The system employs a security mechanism to ensure only authorized users have access to the system. Additionally, a reader only receives certain information upon request, thus the system tracks the time at which readers request and receive information.);

a review receiving module for receiving evaluation of the portion of the work from the reader and placing the review in the storage means associated with portion of the work (col. 3, lines 41-51; Figure 3); and

criteria determination means for determining whether the portion of the work meets predetermined reader-satisfaction criteria (col. 3, line 65-col. 4, line 60; The system receives a reader's ratings and determines whether the work meets predetermined reader-satisfaction criteria (i.e., how the current reader found the article to be).).

Kurzrok does not expressly disclose the security means being used for implementing at least one security mechanism to limit the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship. Teppler discloses the use of digital time-stamps to associate a date and time with an electronic document in order to prove at a later date that the document existed at the date/time listed on the digital time stamp (col. 11, lines 25-34). Teppler even provides an example of an application of the digital time-stamp to prove which scientist created a document first. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Kurzrok to utilize a time-stamp mechanism as disclosed by Teppler as a security means for checking who submitted a portion of a work first because doing so provides an accurate means of determining who submitted a document first, and therefore, determining the original author of the document as used by Teppler.

As per claims 2 and 16, Kurzrok discloses the system and method of claims 1 and 15 further comprising analysis means for generating analysis information regarding

the work based on the reader-feedback (col. 3, line 65-col. 4, line 60; Figure 4A; The system performs various analyses on the work based on reader-feedback such as cumulative rating percentages.).

As per claims 4 and 18, Kurzrok discloses the system and method of claims 1 and 16 wherein the criteria determination means determines whether a predetermined number of reviews have been made prior to evaluating whether the reader-satisfaction criteria have been met (col. 3, lines 25-27; col. 4, lines 1-10; The system monitors the number of reviews received for each work and calculates the ratings at regular intervals.).

As per claims 5 and 19, Kurzrok discloses the system and method of claims 4 and 18 wherein the criteria determination means utilizes multiple rounds of criteria and determines whether a predetermined number of reviews has been made for each round prior to evaluating whether the reader-satisfaction criteria have been met (col. 3, lines 25-27; col. 3, line 65-col. 4, line 20; The system monitors the number of reviews received for each work and calculates the ratings at regular intervals.).

As per claims 8 and 22, Kurzrok discloses the system and method of claims 5 and 20 wherein the reader-satisfaction criteria are different for each round (col. 3, lines 25-27; col. 3, line 65-col. 4, line 20; col. 4, lines 52-65; The system monitors the number of reviews received for each work and calculates the ratings at regular intervals and further, assigns weights to the reviews, thus changing the satisfaction criteria.).

As per claims 3, 9, 17 and 23, Kurzrok discloses the system and method of claims 2, 8, 16 and 22, respectively, as discussed above. Kurzrock also discloses the

analysis indicating the percentage of readers that considered the work as "excellent" or "good" (col. 3, lines 15-16; col. 4, lines 18-20; Figures 2-4). Kurzrock does not expressly disclose that the readers indicate a willingness to purchase the work. However, an indication of a literary work as "excellent" or "good" conveys a similar favorable sentiment as indicating a willingness to purchase a literary work. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Kurzrock to use a willingness to purchase a work as an indicator since it would provide similar analytical results in terms of assessing readers' sentiments towards a work.

As per claim 10, Kurzrok discloses the system of claim 4 wherein the predetermined number of reviews is based on demographics of the readers so that the criteria determination means evaluates the reader-satisfaction criteria after certain numbers of readers from each of a plurality of demographics has evaluated the work (col. 3, lines 20-27; col. 4, lines 1-10; Figures 2, 4B and 4C; The system receives demographic data from users when they submit ratings.).

As per claim 11, Kurzrok discloses the system of claim 10 wherein the work presentation means selects a work from the storage means based on demographics of the reader and the number of readers from each demographic that the work needs to meet the demographic reader requirements (col. 2, lines 44-49; col. 3, lines 33-34; Figures 2, 4B and 4C; Readers select work that is of interest to them and therefore, is based on the demographic background of the readers.).

As per claims 12 and 26, Kurzrok discloses the system and method of claims 1 and 15 wherein the work presentation means selects a work based on genre selected by the reader (col. 3, lines 33-34; The user selects work relating to a subject of interest.).

As per claim 24, Kurzrok discloses the method of claim 22 wherein the predetermined number of reviews is based on demographics of the readers so that the criteria determination means evaluates the reader-satisfaction criteria after certain numbers of readers from each of a plurality of demographics has evaluated the work (col. 3, lines 20-27; col. 4, lines 1-10; Figures 2, 4B and 4C; The system receives demographic data from users when they submit ratings.).

As per claim 25, Kurzrok discloses the method of claim 24 wherein the work presentation means selects a work from the storage means based on demographics of the reader and the number of readers from each demographic that the work needs to meet the demographic reader requirements (col. 2, lines 44-49; col. 3, lines 33-34; Figures 2, 4B and 4C; Readers select work that is of interest to them and therefore, is based on the demographic background of the readers.).

As per claims 35 and 36, Kurzrok discloses the system of claim 1 wherein the at least one security mechanism comprises providing only a portion of the work to limit access of the reader to the entirety of the work (col. 4, line 66-col. 5, line 8; The system employs a security mechanism to ensure only authorized users have access to the system. Additionally, a work can only be accessed from a database and edited if the correct password is entered.).

Claims 6, 7, 13, 14, 20, 21 and 27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurzrok (U.S. 6,260,064) and Teppler (U.S. 6,948,069) as applied above, and further in view of Philips et al. (U.S. 6,473,084).

As per claims 6 and 20, Kurzrok and Teppler disclose the system and method of claims 5 and 19 as discussed above. Neither Kurzrok nor Teppler expressly discloses the criteria determination means removes a work from availability for presentation to a reader if the work does not meet the predetermined reader-satisfaction criteria. Philips et al. discloses removing work from presentation to a reader if the work does not meet certain reader-satisfaction criteria (col. 37, lines 6-30) in order to ensure that only work that is considered interesting/desirable by readers is presented on the website (col. 36, line 66-col. 37, line 3; col. 42, lines 19-23). Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Kurzrok to remove work that does not meet certain reader-satisfaction criteria because doing so ensures that only work that is considered interesting/desirable by readers is presented on the website, ultimately maintaining reader viewership (Philips et al., col. 43, lines 11-15).

As per claims 7 and 21, neither Kurzrok nor Teppler expressly discloses the system and method of claims 1 and 20 further comprising reader-feedback means for providing reader feedback to the author if a work is rejected to enable the author to revise the work for resubmission. Philips et al. discloses reader-feedback means for providing reader feedback to the author if a work is rejected to enable the author to revise the work for resubmission (col. 10, line 62-col. 11, line 12; col. 36, lines 24-59;

col. 38, lines 1-16). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system to use reader-feedback so that the author can revise work for submission because doing so ensures that only work that is considered interesting/desirable by readers is presented on the website, ultimately maintaining reader viewership (Philips et al., col. 43, lines 11-15).

As per claims 13, 14, 27 and 28, neither Kurzrok nor Teppler expressly discloses the system and method of claims 1 and 15 further comprising a membership module that creates a membership for the author prior to work submission that includes a contract in which the member/submitter agrees to pay a percentage of royalties earned from the work when it is published; and wherein the membership module also collects a fee for each submission of a work for review from the member. Philips et al. discloses a membership module where authors agree to a contract that contains various terms and stipulations for submitting work (col. 37, lines 6-42; col. 40, line 59; col. 42, lines 25-54). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system to have the authors be members who adhere to terms of a contract because doing so ensures a certain standard of quality of submitted work, which provides readers with relevant and interesting reading (Philips et al., col. 43, lines 11-15).

As per claims 29-33, neither Kurzrok nor Teppler expressly discloses the method of claim 15 further comprising the step of assisting in publication online of the work if predetermined reader-satisfaction criteria are established; comprising the step of issuing a certification of approval from a host entity; further comprising the step of

licensing the publisher with the right to post the certification with the work. Philips et al. discloses publishing works online meeting predetermined criteria, indicating works that have been approved as having a high rating, and licensing works (col. 37, lines 6-48; col. 38, line 17-col. 39, line 64). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to publish online and license the works meeting predetermined criteria and indicating a certification of approval because doing so provides recognition to authors of work considered as having a high quality, thus encouraging authors to submit work of a high quality (Philips et al., col. 43, lines 11-15).

As per claim 34, Kurzrok discloses the method of claim 33 further comprising deriving revenue from the publication of the work (col. 4, lines 48-60; Authors are paid fees for their works that have been presented and rated.).

(10) Response to Argument

Appellant's arguments have been fully considered, but are found unpersuasive. In the Remarks, Appellant argues the following:

1) that Kurzrok does not describe determining whether a predetermined reader-satisfaction is met;

2) that Kurzrok fails to teach a security means that limits the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship;

3) that hindsight was used to reject the limitation argued in argument 2);

4) that Kurzrok fails to disclose the percentage of readers that would purchase the work;

5) that Kurzrok fails to disclose having a predetermined number of reviews prior to determining whether a predetermined reader-satisfaction is met;

6) that Kurzrok fails to disclose utilizing multiple rounds of criteria and determines whether a predetermined number of reviews has been made for each round prior to evaluating whether the reader-satisfaction criteria have been met; and

7) that there is no motivation to combine the teachings of Kurzrok/Teppler with Philips et al.

In response to argument 1), Examiner respectfully disagrees. In col. 3, line 65-col. 4, line 60, Kurzrok discloses calculating cumulative rating parameters for each article/advertisement, where the ratings dictate how satisfied a reader was with the article/advertisement. Kurzrok provides examples of rating categories such as "excellent," "good," "fair," or "no-value," where such categories provide a measure of predetermined reader-satisfaction criteria. Figures 4B-4C further illustrate a breakdown of the ratings by the type of reader, showing the percentages of how different types of readers were satisfied with the advertisements. Thus, Examiner respectfully submits Kurzrok does disclose determining whether a predetermined reader-satisfaction is met.

In response to argument 2), Examiner respectfully disagrees. To clarify, Examiner submits that Kurzrok was not relied upon to teach the entire limitation argued; rather, Kurzrok was relied upon to only teach a "security means for limiting access to the portions of the works." In col. 5, lines 1-8, Kurzrok discloses use of a security mechanism via a password to ensure only authorized users have access to the system. In the Office Action, Examiner admitted that Kurzrok does not expressly disclose the security means being used for implementing at least one security mechanism to limit the ability of users *to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship*. Examiner relied upon Teppler to teach this in col. 11, lines 25-34 and 47-52, where Teppler discloses the use of digital time-stamps to associate a date and time with an electronic document in order to prove at a later date that the document existed at the date/time listed on the digital time stamp. Teppler even provides an example of an application of the digital time-stamp to prove which scientist created a document first. Thus, Examiner respectfully submits Teppler does disclose a security means that limits the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship.

In response to argument 3), Examiner respectfully disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Further, in many, of not most, situations, there is neither a motivation to make the modification clearly articulated in the references nor an evident lack of motivation. Rather, prior art references typically disclose elements or aspects of the claimed subject matter, but fail to specifically point the way toward the combination, substitution or other modification needed to arrive at the invention. A judgment must be made whether "a person of ordinary skill in the art would have had sufficient motivation to combine the individual [elements] formed the claimed [invention]." See *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976).

In response to argument 4), Examiner respectfully disagrees. As discussed in the response to argument 3), in many, if not most, situations, there is neither a motivation to make the modification clearly articulated in the references nor an evident lack of motivation. Rather, prior art references typically disclose elements or aspects of the claimed subject matter, but fail to specifically point the way toward the combination,

substitution or other modification needed to arrive at the invention. A judgment must be made whether "a person of ordinary skill in the art would have had sufficient motivation to combine the individual [elements] formed the claimed [invention]." See *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). In the present case, Kurzrock discloses analysis indicating the percentage of readers that considered a work as "excellent" or "good," for example (see col. 3, lines 15-16; col. 4, lines 18-20; Figures 2-4). While Kurzrock does not expressly disclose that readers indicate a willingness to purchase a work, Examiner submits that an indication by a reader of a literary work as "excellent" conveys a positive sentiment, which can be construed as a higher likeliness to purchase the work given the "excellent" rating as opposed to a reader who rates the work "fair" or "no value," thereby indicating a negative sentiment towards the work, which can be construed as a lower likeliness to purchase the work. Marketing-related surveys of consumers are often used to ask consumers' opinions of products and services in order to determine an indication of whether consumers are likely to purchase/use the products and services. As both a rating of "excellent" and an indication to purchase a work, are positive sentiments toward the work, Examiner respectfully submits that at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Kurzrock to use a willingness to purchase a work as an indicator of reader satisfaction since it would provide similar analytical results in terms of assessing readers' sentiments towards a work. Providing additional data to use in determining readers' satisfaction with a work would be of benefit to Kurzrok as the main goal of Kurzrok is to assess readers' satisfaction with a work and

provide the assessment to the content provider of the website to determine whether or not to pay the content provider for the work (see col. 1, lines 7-11 and 24-26).

In response to argument 5), Examiner respectfully disagrees. In col. lines 25-27; col. 4, lines 1-10 and as illustrated in Figures 4A-4C, Kurzrok discloses tracking the number of reviews received for each work and using the number to assign weights and calculate the ratings at regular intervals. Thus, a predetermined number of reviews are used prior to determining (or performing the calculation of) reader-satisfaction.

In response to argument 6), Examiner respectfully disagrees. In col. col. 3, lines 25-27; col. 3, line 65-col. 4, line 20, the system monitors the number of reviews received for each work and calculates the ratings at regular intervals. As the claims lack express recitation regarding what is meant by "multiple rounds," Examiner respectfully submits that collecting and calculating the ratings at regular intervals can reasonably be construed as collecting and calculating the ratings at multiple rounds.

In response to argument 7), Examiner respectfully disagrees. As discussed in the Office Action, neither Kurzrok nor Teppler expressly discloses the criteria determination means removes a work from availability for presentation to a reader if the work does not meet the predetermined reader-satisfaction criteria. However, as discussed above in the response to argument 4), the main goal of Kurzrok is to assess readers' satisfaction with a work and provide the assessment to the content provider of

the website and to generate payment to the content provider for their work (see col. 1, lines 7-11 and 24-26), thus providing motivation within Kurzrok to remove work from the website that does not meet reader satisfaction as the content provider of the work would not get paid for unsatisfactory ratings. Philips et al. discloses removing work from presentation to a reader if the work does not meet certain reader-satisfaction criteria (col. 37, lines 6-30) in order to ensure that only work that is considered interesting/desirable by readers is presented on the website (col. 36, line 66-col. 37, line 3; col. 42, lines 19-23). Therefore, Examiner respectfully submits that, based on the goal of Kurzrok to pay content providers based on the ratings for their work, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Kurzrok to remove work that does not meet certain reader-satisfaction criteria.

The remainder of Appellant's arguments Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Additionally, the remainder of Appellant's arguments are based on the arguments already addressed above and therefore, are considered to have been already addressed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

C. MICHELLE TARAE
PRIMARY EXAMINER

Conferees:

Beth Van Doren
Patent Examiner
Art Unit 3623

Vince Millin
Appeal Conference Specialist
Technology Center 3600